

TENNESSEE ETHICS COMMISSION

Minutes of March 20, 2007

Pursuant to the call of Chairman Thomas J. Garland, the Tennessee Ethics Commission ("Commission") met on Tuesday, March 20, 2007, in the Executive Conference Room of the State Capitol.

The following Commissioners were present:

Thomas J. Garland, Chair

Donald J. Hall

Linda W. Knight

Dianne F. Neal

Benjamin S. Purser, Jr.

R. Larry Brown joined the meeting at a later time.

CHAIRMAN THOMAS J. GARLAND CALLED THE MEETING TO ORDER AT 11:50 A.M.

CHAIRMAN GARLAND WELCOMED SENATOR KYLE TO SPEAK TO THE COMMISSION.

Senator Kyle stated that he had participated in the ethics committee that made recommendations for the new ethics law and that he was attending the meeting based on several conversations he had with the Commission's Executive Director, Bruce Androphy. He stated that he realized that he needed to come speak to the Commissioners directly. Senator Kyle also referred to the Senate Finance Committee Meeting that occurred earlier in the day. He stated that the Commission should stay within the parameters of its jurisdiction as defined by the Legislature. Next, Senator Kyle discussed the word "audit" in the Ethics Reform Statute and stated that there was much dialogue regarding this "term of art" during the ethics committee discussions that can be reviewed by listening to the tapes. He stated that many Legislators did not wish to have any type of auditing at all, but they ultimately decided to have audits in order to give some credibility to the reports. Senator Kyle discussed the example of a possible audit of an event where the entire General Assembly was invited. He said the audit should be limited to determining the actual cost of the event compared to the amount reported by the employer of the lobbyist. He advised that the Commission should not go behind the numbers to assess other information such as whether the price was a good one or not. Senator Kyle also suggested that the Legislature depends on the private sector to provide information and he emphasized the public policy of Tennessee to have a low number of state employees. As an example of this policy, he stated that the Tennessee Legislature is 48th or 49th in the country insofar as its cost per capita to the citizens. He suggested, that when it comes to the issue of "audits" for employers, it is better "wading into the water" instead of "jumping into the water." He also announced that there are some concerns on what the employers have to fill out on the forms and he advised the Commission members to review the statute regarding each item on the form. Furthermore, Senator Kyle stated that he believes the Ethics Commission should be a "shield" and not a "sword."

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Senator Kyle stated that he envisioned that this Commission would take some of the work off local governments. He gave Shelby County as an example and announced that there is currently a bill with a revised fiscal note of over \$50,000 that would expand the jurisdiction of the Ethics Commission to have the Shelby County local officials covered by the Commission. He expressed his concern that this type of large fiscal note may keep some of the small towns from considering this concept.

Finally, Senator Kyle opined that many of the officials' disclosure reports will be used for political reasons in the next election cycle and reminded the Commission to be careful to only present accurate information. He also suggested that the Commission has the opportunity to set an operational standard for the state on how to run a paperless operation.

Chairman Garland thanked Senator Kyle for his visit and assured Senator Kyle that the Commission is a non-partisan body made up of members having no political agendas.

Commissioner Neal moved for approval of the February 15, 2007 meeting minutes. Commissioner Hall seconded the motion. Commissioner Neal suggested a language change for clarification on page 8, in the second sentence of the next to the last paragraph to read, "She stated" instead of "He stated."

The motion to approve the minutes was unanimously approved.

CHAIRMAN GARLAND BEGAN DISCUSSION REGARDING THE WAIVER OF A LOBBYIST REGISTRATION FEE.

Mr. Androphy recommended that the Commission should decide whether to grant the fee waiver to the Tennessee Consumer Finance Association. This waiver was requested due to the death of their lobbyist, Joe Majors. Commissioner Knight asked if the Commission had authority to grant a waiver for 501(c)(6) entities. It was clarified that this type of entity is usually some type of professional society or trade association. There was consensus to give credit for one lobbyist registration fee in the amount of \$150 to the Tennessee Consumer Finance Association. Commissioner Knight suggested considering a rule of general application for this type of situation in the future.

CHAIRMAN GARLAND RECOGNIZED BRUCE ANDROPHY FOR THE EXECUTIVE DIRECTOR'S REPORT.

Mr. Androphy announced that there are currently 493 registered lobbyists and that lobbyists and employers of lobbyists are continually registering. He also stated that the lobbyist training sessions have been scheduled. He suggested having one of the training sessions available by video-conferencing from one of the Legislature's facilities to limit travel for those that are outside of Tennessee and to assist those with a hardship. Chairman Garland asked how the Commission would enforce this type of training. Mr. Androphy stated that one of the three training dates in June would be selected for video-conferencing and the lobbyist would then have to certify that he or she observed the training with a notarized certification letter, as well as satisfy the fee requirement. Commissioner Knight asked Mr. Androphy if an on-line course

would be possible. Mr. Androphy responded that it would be possible in the future, but probably could not be set up by June of this year. Commissioner Purser questioned if the certification would have to be notarized. Mr. Androphy said that this would be a judgment call by the Commission. Chairman Garland suggested researching other training entities to determine what types of procedures others have done for training certification.

Next, Mr. Androphy discussed the growth of the available information now located on the Commission's website. He also presented a listing of other ethics training sessions that are scheduled for agencies around the state. He stated that he hopes to have senior management of all the state agencies trained by June. Mr. Androphy announced that there was an ethics training for the Governor's staff on March 16 and that on March 30, there will be a training session for all agency Commissioners.

Mr. Androphy addressed the progress of electronic filing and presented two proposals from NICUSA. He announced that the Senate Finance Committee gave the approval for the Ethics Commission to pursue comprehensive electronic filing. Mr. Androphy stated that the Ethics Commission could be a nearly paperless agency by the year 2008.

Mr. Androphy also announced that he hopes that the database of the local officials' Statement of Disclosure of Interest information will be online by the end of this week. He stated that two employees of the Commission are working full time to cross-check the forms that were sent in against the list provided by local election commissions. Mr. Androphy estimated that less than 200 warning letters out of 6,000 filers need to be sent to local officials and that these letters will be sent this week or next week. He stated that the filing list is fluid, as new elections happen regularly around the state, and that electronic filing next year will help greatly in the Commission's mission. Commissioner Neal asked whether the new electronic system would change the ability to send warning letters in the future. Mr. Androphy responded that the electronic filing will not completely eliminate this need, but the system could be set up to generate these warning letters.

Mr. Androphy announced that seven warning letters were sent to state officials regarding their requirement to file their Statement of Disclosure of Interest form and that the Commission has now received all the required forms from this group. Mr. Androphy also stated that letters went out last week to the Members of the General Assembly, the Governor, the Governor's Cabinet, and the Constitutional Officers regarding their requirement to file the disclosure form by April 15, 2007. He confirmed that the forms were sent to the officials' home addresses and were also messangered to the officials' work addresses. Finally, Mr. Androphy noted that at least one member of the staff attends all the House or Senate committee meetings that have bills calendared regarding the Ethics Commission.

Commissioner Hall asked Mr. Androphy about the four primary bills regarding the Commission. Specifically, he inquired about HB1464. Mr. Androphy stated that this bill did not really have an effect on the Commission and that it concerned the Comptroller establishing a separate filing requirement for his employees.

Mr. Androphy stated that the Senate budget hearing had occurred earlier in the day. He confirmed that the Senate Finance Committee did not approve the request for \$175,000 for additional Commission personnel. However, he stated that the door is left open if there becomes a need in the future for additional personnel. Mr. Androphy acknowledged that the Senate Finance Committee did approve \$100,000 for the NICUSA comprehensive electronic filing system. Also, Mr. Androphy confirmed that the Commission took in more revenue and spent fewer funds than was expected this year.

Chairman Garland announced that he was pleased with the outcome of the Senate Finance Committee today.

Commissioner Purser asked Mr. Androphy if the staff had produced a list of "Frequently Asked Questions" to post on the website. Mr. Androphy responded that a "Supplemental Instructions" page is now available to assist those required to fill out the Statement of Disclosure of Interest forms. Commissioner Purser suggested putting a notice on the form to direct fillers to the Instructions page on the website.

Mr. Androphy announced that Mona Jean-Baptiste resigned from the Commission to become a litigator with the Department of Health. He also introduced Allegra Montgomery Walker who will be joining the staff on April 2, 2007, as the new associate attorney.

Commissioner Hall asked Mr. Androphy about the log-in sheet at the office. Mr. Androphy affirmed that there is currently a log-in sheet for all visitors to the Commission's office. Commissioner Hall posed the question whether the log-in sheet for all visitors is adequate to cover those individuals that are also accessing records. He also requested that Mr. Androphy report to the Commission if there appears to be any problems or lack of information relevant to privacy concerns regarding the log-in procedure.

Commissioner Brown joined the meeting at 12:43 p.m. Chairman Garland reviewed the discussed items of the meeting for Commissioner Brown. Chairman Garland also announced that the "Guiding Principles" item on the agenda would be rolled to the next Commission meeting in April.

CHAIRMAN GARLAND REGOGNIZED ANNE TURNER, GENERAL COUNSEL FOR THE COMMISSION, TO DISCUSS THE PUBLIC RECORDS RULES.

Ms. Turner stated that the Commissioners had considered a draft of the proposed rules at the last meeting and she affirmed that the current draft should address some of the Commissioners' concerns. Ms. Turner also announced that there is currently a bill that relates to the Open Meetings Act and the Public Records Act that may affect the Commission's ability to charge a fee for making a copy of a record. She stated that the Commission may prefer to address the proposed rules after it is determined if the bill will pass or possibly amend the rules if the bill does pass. She stated that the Commissioners could decide not to promulgate any rules at this time and administer some office procedures instead.

Commissioner Knight stated that the current draft she was given does not show what changes were made to the previous proposed draft. She stated that she would not be able to continue in the discussion without knowing the exact changes. Commissioner Purser agreed with Commissioner Knight.

Commissioner Hall moved to roll the Public Records Rules discussion to the following meeting when the copies of the drafts with the red-lined revisions would be available. He also suggested that this may provide more time to determine if the bill will pass.

Ms. Turner asked the Commissioners whether they wished to set an office policy or procedure for providing access to the records or for making copies of records. Commissioner Knight questioned how the Commissioners could determine if these types of procedures should be defined in a rule or as an office policy. Commissioner Neal discussed the ramifications of setting an office policy without knowing all the issues that may arise, therefore; she recommended identifying possible office policy considerations in the discussion of the proposed rules at the next meeting.

Commissioner Purser added that the staff should be focused on protecting the integrity of the records and he suggested that someone in the staff should be fully attentive to any person that may come to view or copy a document.

DISCUSSION OF THE GUIDING PRINCIPLES

Commissioner Knight inquired about the basis for the Guiding Principles draft. Specifically, she questioned why such states as New York, Connecticut, and Louisiana were selected to be modeled for our purposes. She also requested to know more about whether Tennessee law already addresses certain subjects within the drafted principles. She also renewed her request to have an annotated version of the guiding principles draft.

Mr. Androphy responded that the current draft is a result of brainstorming from the staff and was also derived from utilizing the most useful and practical codes from other states. He also acknowledged that the guiding principles are purely aspirational standards. Commissioner Hall suggested that the statute does not require the Commission to identify where each guiding principle was derived, although it might be helpful to do so. Commissioner Purser agreed that the information would be informative, but that it was not necessary to present the citations along with the proposed set of Guiding Principles.

Commissioner Knight proposed that she is trying to interpret the Guiding Principles as if she was a Commissioner of "X" agency and she would like to be able to understand exactly what the principles are saying and how they vary from existing Tennessee law.

Commissioner Neal expressed her discomfort with the current draft and believes that much of the language reads as legislative language instead of overall guiding principles.

Commissioner Brown noted that the guiding principles are merely suggestions. He suggested that many state agencies probably already have some form of ethical conduct guidelines, and he

believes the Commission's Guiding Principles should be some type of comprehensive list of how government should operate in an ethical manner. Commissioner Purser agreed.

Chairman Garland announced that there will be more discussion regarding the Guiding Principles at the next meeting and suggested that the Commissioners should take the interim time to consider exactly what they believe the Guiding Principles should be designed to accomplish.

MR. ANDROPHY OPENED THE DISCUSSION ON ADVISORY OPINION NO. 07-02 REGARDING GIFTS BASED ON PERSONAL RELATIONSHIPS.

Mr. Androphy stated that the advisory opinion is an attempt to assist people in determining the definition of the existing gift exception based on close personal friendships. He stated that the draft opinion consists of five factors to consider when making this gift exception determination. He confirmed that staff has had questions regarding the issue, and although the advisory opinion was not formally requested, he believed it would be helpful for those with these types of questions.

Commissioner Knight suggested putting all the gift exceptions in a footnote. Mr. Androphy responded that the gift exception portion of the statute will be noted in the opinion. Commissioner Knight asked to add reference to the statute, T.C.A. §3-6-305(b) on page 2 in the first sentence under the Discussion section.

Commissioner Neal asked why the issue was addressed with an advisory opinion and not addressed by a rule as the statute guides. Mr. Androphy responded that the advisory opinion is just a first step to present the issue for discussion with the Commission. Commissioner Neal also asked Mr. Androphy how the advisory opinion will be utilized in the staff procedures. He responded that the advisory opinion will be used as a guide to advise people and could be referenced to help the questioner make an informed decision regarding personal gifts.

Commissioner Hall agreed that drafting an advisory opinion on this subject was a wise course of action and requested the staff to provide notification to the Commission regarding any specific set of facts presented in the future. Mr. Androphy agreed to keep the Commission apprised of these issues.

Commissioner Brown also agreed with the creation of the advisory opinion to address the gift exception and stated that he believes it will be helpful to the staff to be able to answer daily questions posed to them.

Mr. Androphy announced that the opinion could be easily changed in the future as more information is obtained.

Commissioner Hall moved to adopt Advisory Opinion 07-02. Commissioner Brown seconded the motion. Commissioner Knight stated that she has some stylistic changes for the advisory opinion that will be provided within 72-hours.

The motion to approve Advisory Opinion 07-02 was unanimously approved.

CHAIRMAN GARLAND ANNOUNCED A BRIEF RECESS AT 1:56 P.M.

CHAIRMAN GARLAND RECONVENED THE MEETING AT 2:06 P.M.

CHAIRMAN GARLAND INTRODUCED THE SEMI-ANNUAL LOBBYING EXPENDITURE REPORT AND AUDITING MEMO FOR DISCUSSION.

Mr. Androphy requested Mona Jean-Baptiste, associate attorney for the Commission, to begin the discussion regarding the Semi-Annual Lobbying Expenditure Report and the Auditing Memo. Ms. Jean-Baptiste announced that T.C.A. §3-6-303 requires that employers of lobbyists report semi-annually to the Commission their lobbying expenditures. She stated that the drafted form is an attempt to track the statute as closely as possible.

Commissioner Brown suggested that the form have a space to show the employer reporting time period.

Commissioner Knight had some stylistic changes for the form and asked for clarification regarding reporting compensation paid directly to a lobbyist or compensation paid to cover other lobbying expenses such as video productions or photographs.

Ms. Jean-Baptiste suggested that if these types of expenses are paid directly to a lobbyist, the employer should report that amount under Question #5 on the form, but if these types of expenses are paid directly to other sources, it should be reported under Question #6. Discussion followed regarding this issue. Mr. Androphy suggested adding an additional explanation to the directions in Question #5 to clarify expense listings for employers. Commissioner Knight agreed.

Commissioner Neal asked if monetary ranges were intended for Question #7. Ms. Jean-Baptiste responded that monetary ranges were intended and that more specific language could be included in the question instructions to give this effect.

Mr. Androphy suggested putting the total of all the employers' events in Question #7 and having Question #8 as the aggregate total of all the expenses.

There was a consensus for this adjustment to the form.

Commissioner Knight also had questions concerning Question 5(a). Ms. Turner stated that the percentage designations could be deleted and the directions could be modified so that employers do not need to report the total amount paid to a lobbyist that is not used for lobbying purposes.

Commissioner Knight requested to extend the deadline for changes to March 28.

All Commissioners agreed to this extension for changes.

MR. ANDROPHY BEGAN DISCUSSION OF THE AUDITING MEMO.

He stated that the focus of auditing is really for lobbyists, not for the employers of lobbyists, and that the statute requires the Commission to audit a certain percentage, as well as review the electronic submissions for compliance. He stated that the memo was drafted to provide

suggestions on what should be audited. He suggested that one option is to audit the lobbyist registration statements, along with the employer contracts, to compare with the employer disclosure reports.

Commissioner Hall referred to Senator Kyle's earlier statements. He stated that Senator Kyle's interpretation of the term "audit" was narrow. Commissioner Hall referred to the statute for the definition of "audit" which he opined to be a much broader interpretation. He stated that he believes the audit would allow investigation of the underlying data pertaining to the reported information.

Commissioner Neal asked for clarification regarding what areas the auditing process was to cover. Mr. Androphy stated that the two areas for possible auditing were lobbyist registrations and the compensation amounts paid to the lobbyists, as compared to the employer disclosure reports.

Chairman Garland asked about the selection procedure for the audits. Mr. Androphy stated that the Attorney General will be present when the random selection process is performed. Mr. Androphy stated that the statute requires that at least two percent (2%) of the lobbyists be audited. He suggested that it is up to the Commissioners to decide if they wish to audit more than this amount. Commissioner Neal stated that she was comfortable with beginning with a 2% audit.

Chairman Garland agreed. He opined that a 2% audit would be a good "pilot program" to get a clear picture of issues. Mr. Androphy estimated that about ten lobbyists will be audited this year using this percentage.

Commissioner Purser stated that he views the auditing process as one of the major functions of the Commission. He stated that a 2% auditing percentage is too low.

Chairman Garland suggested that the auditing percentage could be increased at any time and 2% would be a good starting point. Commissioner Brown and Commissioner Knight agreed.

Commissioner Hall also agreed that 2% is a good place to start with the clear expectation that this number would increase significantly in the next couple of years.

Chairman Garland asked when the auditing process would begin. Mr. Androphy stated that the auditing would begin after May 14, 2007.

Commissioner Hall moved to begin the auditing process in June 2007. Commissioner Brown seconded the motion.

The motion passed to begin the lobbyist audits in June 2007.

CHAIRMAN GARLAND BEGAN THE DISCUSSION REGARDING OFFICE PROCEDURES.

Chairman Garland first asked for clarification regarding the complaint procedure.

Anne Turner provided a handout to the Commissioners for a listing of the processes that occur when a complaint is received by the Commission. She went through the process step-by-step. She stated that all complaints that are not within the Commission's jurisdiction are immediately dismissed. She confirmed that the Commission had already received some complaints that were not within its jurisdiction.

Commissioner Neal asked if the complainant would be provided with an explanation statement if the complaint is dismissed. Ms. Turner responded that the complainant would be given a statement that explains why the complaint was dismissed. She also stated that a copy of the complaint is provided to the respondent, the party that is being accused of the violation, within five business days.

Commissioner Knight suggested that language be added to the respondent's letter to state that the Commission and all members of the staff are bound by a confidentiality requirement.

Commissioner Hall advised that the respondent needs clear information regarding the process if they are provided with information about a complaint against him or her. Commissioner Neal also suggested providing information regarding the person's rights if an investigation is to continue.

Commissioner Brown asked if the complaint is given to the Commission after the Attorney General makes initial findings. Ms. Turner advised that the Commission is responsible for making a determination if the action should continue after the Attorney General makes his initial findings. Commissioner Brown suggested having another notification step to the respondent after the Attorney General makes this initial investigation.

Commissioner Brown also stated that currently there is no time limit for the Attorney General's investigation or for the Commission to make its determination. He suggested setting some non-binding time limit goals.

Commissioner Knight requested that the Commission be given notification of complaints that are filed, along with some information regarding the substance of the complaint.

Mr. Androphy confirmed that the Commission has now received one complaint that is within its jurisdiction.

Chairman Garland agreed with Commissioner Brown that the Commission should become involved in the complaint process after the initial determinations are made by the Attorney General.

Commissioner Hall asked if the Commissioners will be provided with the Memo of Understanding from Janet Kleinfelter, Assistant Attorney General. Ms. Turner stated that the Memo will be provided to the Commissioners.

Commissioner Purser asked Mr. Androphy how the complaint information will be protected within the office. Mr. Androphy stated that he had spoken with all the members of his staff and had informed them of their confidentiality requirement, along with the possible penalties for not abiding by this requirement.

CHAIRMAN GARLAND DISCUSSED OTHER OFFICE MATTERS.

Chairman Garland stated that he had received a request from an organization wanting the Commissioners to sign a letter to be provided to House Speaker Nancy Pelosi. He described the letter as a form letter request to begin an independent Ethics Commission in Washington, D.C. Chairman Garland suggested that the Commission draft its own letter if it wishes to take action on this issue.

MR. ANDROPHY ANNOUNCED THAT THE NEXT COMMISSION MEETINGS ARE SCHEDULED FOR APRIL 24 AT 9:00 A.M. AND MAY 22 AT 9:00 A.M.

CHAIRMAN GARLAND RECOGNIZED MEMBERS OF THE AUDIENCE TO SPEAK.

Allan Ramsaur, from the Tennessee Bar Association, thanked the Commission for providing information before the meeting. He suggested that it would be helpful to be provided with more information. He stated that the Registry of Election Finance already had a policy for the acceptance of personal gifts and that it would have been helpful for the Commission to consider the past provisions in its decision today. He also renewed his request to adapt the agenda to hear advice during the debate process.

Mark Greene, from the Tennessee Lobbyist Association, thanked the staff for their cooperation in the drafting of the employer's report of lobbyist expenditures. He suggested that this type of cooperative discussion is a model for future working relationships. He affirmed his belief that the instructions on the employer's reports need to be very clear.

Dick Williams, from the Common Cause of Tennessee, also thanked the Commission for taking his organization's concerns into account.

CHAIRMAN GARLAND ADJOURNED THE MEETING AT 4:08 P.M.

Respectfully submitted,

Melinda R. Arrington